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Fighting Corruption

The Role of Diplomacy and International Agreements



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The general goals of recent U.S. government anticorruption diplomacy have been to (1) establish internationally accepted norms relating to corruption, (2) encourage mutual or self-evaluation of governments with regard to corruption within their borders, and (3) enhance recognition of corruption as a domestic problem causing serious international implications. There has been a noticeable trickle down effect to these efforts, as the philosophies of good governance, effective law enforcement, and transparency slowly seep into the consciousness of governments and demands of citizens throughout the world.

One factor contributing to the recent popularity of multilateral diplomacy in this area is that most governments, particularly those in transition, are finding no choice but to address the existence of corruption—at the very least with words if not actions. When the U.S. enacted its Foreign Corrupt Practices Act in 1977, other governments were loathe to talk about corruption, much less take action to attack it. But due to factors not yet totally understood—which probably include the end of the Cold War, the increasing globalization of the economy, the crusade of Transparency International and other civil society organizations on this issue, and the increasing disgust towards corruption expressed by local citizens via the ballot box and extra-constitutional means—governments began finally in the mid-1990's to publicly recognize the problem and openly confront it.

Today, governments and politicians can no longer afford to ignore the problems of corruption within their borders. The forces against corruption continually unleash their forces in surprising and sometimes very dramatic ways. Just look at recent events in Mexico, Peru, Philippines, France, Yugoslavia, Thailand, and China, among others. Most of the industrial democracies have implemented legislation outlawing transnational bribery, closed the book on tax deductibility of bribes, and moved away from the idea that a certain amount of corruption is a legitimate part of facilitating business. The international community no longer views corruption in any form as desirable.

The recent Second Global Forum on Fighting Corruption and Safeguarding Integrity (Second Global Forum), hosted by the government of the Netherlands and co-sponsored by the United States government in late May, was an impressive reminder of the attention corruption is receiving from governments throughout the world. Over 140 governments were represented at the gathering, more than 120 at the ministerial level or above. The Bush Administration used this forum to reaffirm the U.S. government's strong commitment to the issue. The President issued a statement to delegates, emphasizing that support for international efforts against corruption is an important element of the Administration's foreign policy. Attorney General Ashcroft, the head of the U.S. delegation, delivered a

well-received presentation highlighting the crucial need for international cooperation in this area while cautioning governments not to let negotiations, declarations and conferences become a substitute for concrete actions at a national level. Secretary Powell, through a State Department publication entitled "Fighting Global Corruption: Business Risk Management" that was released at The Hague, described anticorruption initiatives as a "key" foreign policy element for the United States. (Copies of these statements and further information regarding the Second Global Forum can be found at www.usinfo.state.gov/topical/econ/bribes/homepage.htm)

A key component of recent U.S. diplomatic efforts involves promoting anticorruption agreements in a multilateral context. Such agreements consolidate internationally recognized principles that have led to success in fighting corruption in various countries, and formalize government commitment to implement them. These principles of success or "lessons-learned"—embodied in recent years within binding international agreements such as the Inter-American Convention Against Corruption, the Council of Europe Criminal Law Convention on Corruption, and the OECD Convention on Combating Bribery of Foreign Officials—go beyond simply exhorting governments to criminalize various corrupt actions. They recognize that local actions to promote good governance are key to an effective anticorruption program, and, thus, prescribe attention to areas of traditionally local concern. They outline preventive regulations that affect private sector behavior, such as minimum accounting standards and prohibitions against tax deductibility of bribes. They even accomplish something unusual for international treaties and conventions by formalizing a role for civil society in a government's anticorruption effort.

Another common feature of these agreements helps guarantee that the words of these documents will be translated into actions: they often create mutual evaluation mechanisms to monitor implementation. Mutual evaluation mechanisms force countries to expose their norms, structures and actions to peer review. They facilitate international cooperation and technical assistance to address weaknesses. The international community has used such mechanisms effectively in the Financial Action Task Force/money laundering context, and nascent efforts to apply similar mechanisms in the anticorruption context are beginning to exhibit similar effectiveness.

The U.S. Departments of State and Justice have played an active role in developing and implementing international anticorruption agreements (which did not exist prior to 1996) and ensuring that implementation efforts receive the proper attention and resources to ensure effectiveness. Some of the most notable achievements in this area include:

- **The Inter-American Convention Against Corruption**, negotiated in 1996 under the auspices of the

Organization of American States (OAS), was the first international agreement relating solely to corruption. Its Article III preventive measures represents one of the first attempts to memorialize a holistic anticorruption regime within an internationally binding legal instrument. Under Article III, States Parties are called upon to enact standards of conduct for public employees and create mechanisms to enforce these standards; develop asset disclosure systems for select officials; reform procurement and hiring systems; deny favorable tax treatment to individuals or corporations that make expenditures in violation of local anticorruption laws; provide whistleblower protections; develop government oversight bodies such as Inspectors General and audit institutions; encourage accounting standards that deter against bribery; and provide attention to the relationship between equitable compensation for public employees and corruption. The Inter-American Convention is also the first international agreement to recognize the important role of civil society in the fight against corruption. (www.oas.org)

- **The Convention on Combating Bribery of Foreign Public Officials**, negotiated under the auspices of the Organization for Economic Cooperation and Development (OECD) in 1997, was the first international agreement to mandate that countries take responsibility for their citizens and corporations that further corruption in other countries. In many respects, the convention internationalizes commitments long applied to U.S. corporations and individuals under the Foreign Corrupt Practices Act. In addition, it created the first multilateral mutual evaluation mechanism for monitoring commitments to counter corruption, a vehicle that is widely praised today as a model for international cooperation in this area. The OECD has virtually completed implementation reviews of all 34 signatories to the Convention and is about to commence enforcement reviews of its parties. (www.oecd.org/daf/nocorruption/)
- **The Criminal Law Convention on Corruption**, negotiated under the auspices of the Council of Europe (COE) in 1999, was the first to seek to criminalize bribery exclusively within the private sector, a concept that is not yet widely accepted as an appropriate topic for international agreements. It is the first to require parties to provide independence to persons or entities involved in the fight against corruption so that they are "able to carry out their functions effectively and free from any undue pressure," and to adopt measures necessary to protect witnesses who give testimony about corruption. Like the OECD convention, it created a multilateral

mutual evaluation mechanism that continues to provide essential lessons-learned for international cooperation. The Criminal Law Convention does not include comprehensive preventive measures and is, not surprisingly, primarily criminal law oriented. However, the COE's 20 Guiding Principles for the Fight Against Corruption, adopted in 1997, addresses preventive measures, and are actually being used as the standards for initial stages of mutual evaluations under the monitoring mechanism created by the Criminal Law Convention. (www.greco.coe.int/)

- **The Stability Pact Anticorruption Initiative**, developed under the auspices of the Stability Pact for Southeast Europe in 2000, creates a formal role for international donors and non-party observers within the mutual evaluation process. The goal is to strengthen the commitment of donors to the process by giving them input into the mechanism structure and operations. This should hopefully translate into more commitments for technical assistance and funding needed to address areas identified by the mutual evaluations as ripe for such support. (www.oecd.org/daf/SPAIcom/)

- **The Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials**, while not a binding legal instrument, was blessed by the ninety nations that attended the First Global Forum held in Washington in February 1999. They combine preventive measures found in the Inter-American Convention and COE Criminal Law Convention, and have served as inspiration for a number of subsequent anticorruption efforts. (www.usinfo.state.gov/topical/econ/integrity/confpr.htm#guiding)

The principles behind the items listed above are being adopted in other regions of the world. The Global Coalition for Africa (GCA), for example, adopted anti-corruption principles for its members in 1999 (www.gca-cma.org/) and several countries in Asia are expected soon to adopt similar principles under a joint OECD/Asian Development Bank-

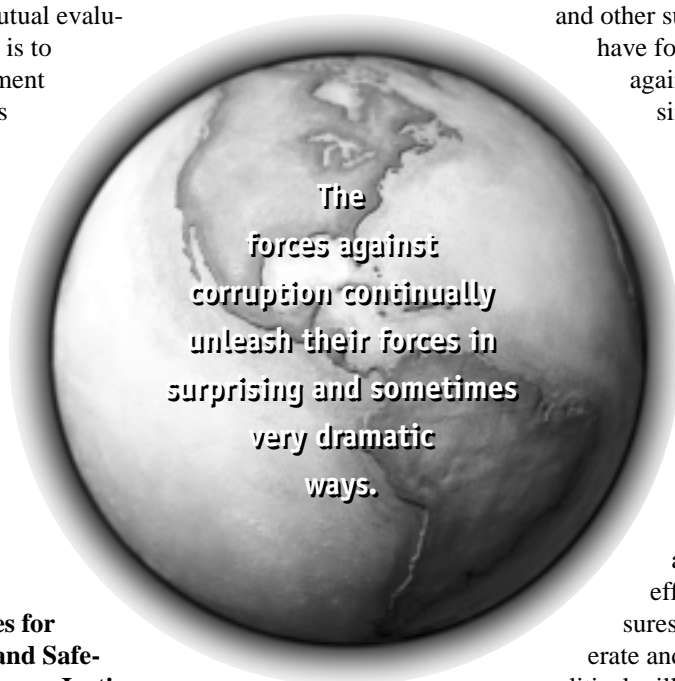
sponsored initiative (www.oecd.org/daf/Asiacom/index.htm). The United Nations will begin negotiations in 2002 on a global anticorruption agreement that, while probably years away from being finalized, will undoubtedly solidify global cooperation and attention to the issue of corruption. (www.odccp.org/press_release_2001-05-18_2.html)

By acknowledging basic international norms regarding corruption and how to counter it, the international community is opening the doors for more and closer multilateral and bilateral cooperation on important but traditionally local fronts. This, in turn, encourages the sharing of lessons-learned, builds trust and relationships between cooperating countries, and ultimately increases the effectiveness of U.S. government and other aid programs that assist these efforts.

The widely-quoted Hong Kong example and other successes against corruption that have followed teach us that the fight against corruption must involve simultaneous attention to a number of fronts: educating the public, engaging the media, private sector and other aspects of a civil society, and building effective law enforcement mechanisms to attack offenders, among others. While the true fight against corruption must occur within the borders of each country, defining what the international community considers acceptable behavior and sharing what are considered effective structural and other measures to prevent corruption help generate and bolster the all-important political will of governments and politicians to address the issue. International agreements help

translate political attention to the problem into action to address the problem. Countries that care about participating in the international community and global economy will care about implementing these standards. Equally as important, citizens and civil society can use adopted standards as tools to help support governments that are moving forward on the issue or for pressuring ambivalent governments that fail to address local problems.

As the United Nations negotiators begin deliberations on a global instrument against corruption in early 2002, there is no doubt they will draw upon the successes of past initiatives by, among other things, adopting preventive measures in addition to criminal law measures, creating a mutual evaluation mechanism to monitor implementation and encourage international cooperation, and by recognizing the important role for civil society in the fight against



corruption. But the international community must not view the development of a United Nations instrument as an excuse to divert attention from the significant achievements that have already occurred and the resulting work that must be done to translate those achievements into real progress. As the international community gains more experience with implementing the international agreements

mentioned above, it benefits far beyond simply seeing the fight against corruption progress at national levels. We are laying the groundwork for future success stories, and the hope that, someday in the future, this relatively recent flurry of anticorruption diplomacy may be viewed as the real turning point in the international fight against corruption. 